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Supreme Court, U.S.
FILED

NOV 17 1986

No. 86-665

JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1986

In the Matter of the Complaint of PARADISE HOLDINGS, INC., a Hawaii corporation, as owner of, and Paradise Cruise, Limited, a Hawaii corporation, as-lessee and charterer of the P/V PEARL KAI, Official Number 527 873, for exoneration from or limitation of liability.

TERRY LEE K. STONE, Individually; as Special Administratrix of the Estate of PAUL HENRY STONE; and as Guardian Ad Litem for PAUL HENRY STONE, JR. and JEREMY NOAH KAMEALOAOKUULEI STONE, minors,

Petitioners,

vs.

PARADISE HOLDINGS, INC. and PARADISE CRUISE, LIMITED,

Respondents.

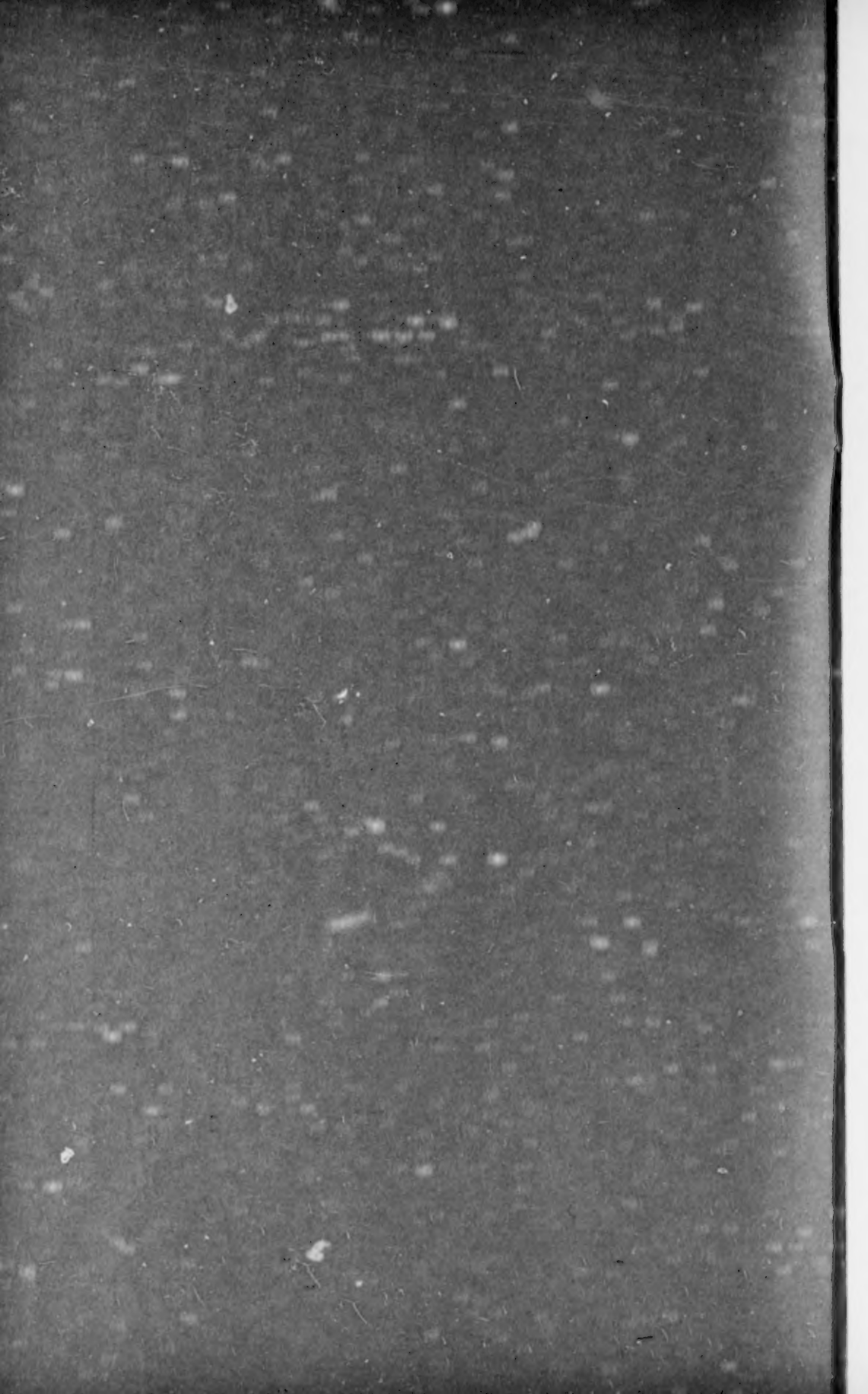
**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTION PRESENTED FOR REVIEW

Whether the lower courts' construction of 46 U.S.C. § 185 and § 187, which balances the shipowner's right to have the issue of privity and knowledge determined first in admiralty with the injured person's right to a jury trial against the master of the vessel in state court, preserves the intent of Congress in enacting the Limitation of Liability Act, 46 U.S.C. §§ 181-198.

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IV.

STATEMENT OF THE CASE

A. FACTS.

On June 19, 1984, the P/V PEARL KAI, a tour vessel carrying passengers, entered the channel leading to Kewalo Basin on the south shore of the island of Oahu. Adjacent to the channel, partially separated by a reef, is an area called "Point Panic". During the summer months, a southern swell creates occasionally large waves in the Kewalo Basin channel and at Point Panic, making Point Panic an ideal site for bodysurfing. As the P/V PEARL KAI was proceeding through the channel, an unusually large wave turned the vessel broadside to other incoming waves, threatening to capsize the vessel. To counteract the sudden heel of the vessel, the Master reversed the engines and backed toward the reef at the side of the channel. Petitioners allege that Petitioners' decedent Paul Stone was bodysurfing at that spot and was killed by the propeller of the P/V PEARL KAI.

B. PROCEEDINGS BELOW.

On June 27, 1984, Petitioners filed an action in the First Circuit Court of the State of Hawaii against the Master of the P/V PEARL KAI (Edward Bruhn), the owner of the P/V PEARL KAI (Paradise Holdings, Inc.) and the charterer of the P/V PEARL KAI (Paradise Cruise, Limited). Other persons alleging injuries notified Respondents of claims against the P/V PEARL KAI. Accordingly, Respondents on July 17, 1984 filed for exoneration from or limitation of liability pursuant to 46 U.S.C. § 181 *et seq.* in the U.S. District Court for the District of

Hawaii. The District Court had admiralty jurisdiction over this action under 28 U.S.C. § 1333 and 46 U.S.C. §§ 181-195.

As required by the Limitation of Liability Act (hereinafter "Limitation Act"), the District Court issued, on July 17, 1984, an Order staying all other proceedings against Respondents until the conclusion of the limitation proceedings. Meanwhile, discovery commenced in the limitation proceeding. Petitioners took the depositions of nearly every eyewitness. Although Captain Bruhn died unexpectedly, Petitioners were aware he was ill for some time before his death and could have taken his deposition in the limitation action at any time. Voluminous documents concerning the operation and construction of the vessel were produced. (See Appendix.) Discovery in the limitation proceeding has continued through the present date.

Although the Order staying State Court proceedings did not specifically so state, Petitioners correctly assumed that they were barred from proceeding against Captain Bruhn. A Motion to Dissolve or Modify the Stay of Proceedings was filed on July 31, 1984. It was also argued that the District Court lacked admiralty jurisdiction.¹

¹ Petitioners argued that the ocean area called Point Panic was not navigable waters of the United States and that a collision between a vessel and a bodysurfer did not involve traditional maritime activity. The District Court upheld admiralty jurisdiction as did the Ninth Circuit Court of Appeals on appeal pursuant to 28 U.S.C. 1292(a)(3). Admiralty jurisdiction is not an issue in the Petition for Writ of Certiorari.

U.S. District Judge Pamela Rymer denied the Petitioners' Motion on January 29, 1985. She stated that to allow the State Court proceeding against the master would "greatly compromise the purpose of the Limitation Act." (619 F. Supp. 21, 27). The equitable marshalling and distribution of assets from the limitation fund would be defeated and the central role of the limitation proceeding would be diminished by relitigation of the same issues to be considered by the state court. In addition, the shipowner and the other Claimants in the limitation proceeding may be deprived of the benefit of the insurance on the vessel. The Court also noted that Petitioners' rights to a jury trial were not substantively affected by the mere delay occasioned by the temporary stay of proceedings.

Petitioners appealed Judge Rymer's Order and the Ninth Circuit issued its opinion affirming the District Court's decision on July 25, 1986. Justice Canby, writing for the majority, observed that this issue was one of first impression. The Court stated that one of the purposes of the Limitation Act was to allow all claims to be aggregated and decided at one time under a single set of substantive and procedural rules. Another major purpose of the Act is to permit the shipowner to retain the benefit of his insurance. A limitation proceeding is an equitable proceeding where the Court must consider the rights of the insured as well as all the Claimants. Noting that allowing the state court suit to proceed first may deplete the limitation fund to the detriment of other Claimants, cause the shipowner to lose the benefit of its insurance, and cause collateral estoppel problems, the Court of Appeals held that "the District Court's approach was a reasonable compromise between the competing goals of preserving the State forum for ad-

judication of some maritime claims and the federal policy of limiting owner liability.' (795 F.2d 756, 763).

Justice Ferguson dissented from this holding, remarking that he failed to see how the District Court's solution furthers the purpose of the Limitation Act, disagreeing that insurance coverage was an issue, and worrying that a stay of state court proceedings might offend notions of comity.

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V.

SUMMARY OF ARGUMENT

The Supreme Court should not allow the Petition for Writ of Certiorari because the opinion of the Ninth Circuit does not conflict with any other Federal Court of Appeals or with an opinion of the U.S. Supreme Court. The Ninth Circuit opinion neither departs from accepted judicial proceedings nor decides an important public question that warrants review by the U.S. Supreme Court.

The opinions below are the first interpretation of 46 U.S.C. § 185 in conjunction with 46 U.S.C. § 187. Congress intended by enacting the Limitation Act to provide for entirely separate proceedings against the shipowners and against the masters, officers, and crew of a vessel, in order to preserve both the shipowner's rights to limit its liability and the injured persons' rights to a jury trial. Congress left it to the courts to work out an equitable scheme in each case to preserve these co-existent rights.

The only practicable solution is to allow the limitation proceeding to go first. Otherwise, Petitioners will be allowed to indirectly try the privity and knowledge issue in state court without the shipowner being able to defend it-

self. Petitioners have conducted extensive discovery to date in the limitation proceedings and any inconveniences of delay in the state court suit are not sufficient to warrant abrogating the shipowner's rights to have the issue of privity and knowledge tried in an admiralty proceeding.

The Supreme Court should not tamper with the Limitation Act when it has been interpreted by the lower courts to effectuate the intent of Congress and to work substantial justice among all the parties.

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VI.

ARGUMENT

A. THE U.S. SUPREME COURT SHOULD NOT ALLOW THE WRIT OF CERTIORARI.

Petitioners, in the argument portion of their Petition, launch into the merits of their case without discussing any of the considerations governing review on certiorari contained in Supreme Court Rule 17. This violation of the Supreme Court Rules alone is sufficient reason for disallowing the Writ of Certiorari. Supreme Court Rule 21.5 In addition, there do not appear to be any special or important reasons for the Supreme Court to review the Ninth Circuit's decision.

The only officially published judicial opinion construing the relationship between § 187 and the stay provision of § 185 is the instant opinion sought to be reviewed. Other cases considering the propriety of a stay of pro-

ceedings did not involve § 187.² The issues presented were whether injured persons could proceed in another forum against the shipowner or the shipowner's insurer. See e.g., *Maryland Casualty Co. v. Cushing*, 347 U.S. 409 (1954); *Guillot v. Cenac Towing Co.*, 366 F.2d 898 (5th Cir. 1966); *Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 545 (5th Cir. 1960).

In *Matter of Brent Towing Co., Inc.*, 414 F. Supp. 131 (N.D. Fla. 1975), as the Ninth Circuit pointed out, the issue of whether a suit against the master and crew could be stayed was not before the District Court. 795 F.2d 756, 763 n.7. The limitation plaintiff in that case had no objections to claimants' proceeding in state court against the master, officers and crew. Petitioners urge that *Brent Towing* should be the controlling authority in the instant case. It is puzzling that Petitioners contend that the U.S. District Court in Florida should dictate principles of statutory construction to the U.S. District Court in Hawaii. Even if the Hawaii District Court were to accept the *Brent Towing* opinion as persuasive authority, the most that can be said is that sometimes limitation plaintiffs do not contest state court suits against masters, officers or crew.

The instant Ninth Circuit case is one of first impression in any federal court. There is no conflict with any other decision of a Federal Court of Appeals. Supreme

² *Complaint of Spanier Marine Corp.*, 1983 A.M.C. 2441 (E.D. La. 1983) [not otherwise reported], construes § 185 and § 187 only in the context of Louisiana's direct action statute allowing suits against insurers. The Court's concern in that case was that the Defendant insurer may have to pay the insurance proceeds before the limitation proceeding is completed, depriving the shipowner of the benefit of his insurance. *Id.* of 2443. A direct action statute is not involved in the instant case.

Court Rule 17.1(a). No State Court of last resort has considered this issue. Supreme Court Rule 17.1(a). There has been no departure from accepted judicial proceeding because there has been no judicial proceeding on this issue. Supreme Court Rule 17.1(a).

The Ninth Circuit has decided a question of federal law that has not been settled by the U.S. Supreme Court, but the opinion is not in conflict with any decision of the U.S. Supreme Court. Supreme Court Rules 17.1(c). The U.S. Supreme Court has not construed § 187 in this context.³

The issue is not of public importance and requires no settling by the Supreme Court. Petitioners are being deprived of no fundamental rights or constitutional protection. Their right to a jury trial is absolutely preserved. The issue has not even arisen in an officially published opinion for over 100 years since the Limitation Act was enacted. It appears that most claimants do not even desire to sue the master, officers and crew individually, but prefer to sue the owner who is covered by insurance. There is plainly not a nationwide multitude of injured persons being deprived daily of jury trials because of limitation proceedings. Respondents submit that the case is not appropriate for Supreme Court review.

³ In *Walker v. Transp. Co.*, 70 U.S. 158 (1866) and *Craig v. Continental Ins. Co.*, 141 U.S. 638, 12 S. Ct. 97 (1891), the Court held that § 187 implies that it was the purpose of §§ 182-186 to release owners from some liability for the negligence of the master, officers and crew.

B. THE COURT OF APPEALS' DECISION TO UPHOLD THE DISTRICT COURT'S STAY OF PROCEEDINGS FURTHERS CONGRESSIONAL INTENT AND PRESERVES THE RIGHTS OF EACH PARTY.

Respondents realize that the merits of cases should be briefed only after the Supreme Court has granted a Writ of Certiorari. However, since Petitioners' violation of the Supreme Court Rules, if the Petition is granted, will have the effect of providing them an opportunity to twice argue their case on the merits, Respondents feel they must briefly argue the merits also to protect their interests .

1. The Limitation Proceeding and Any Proceeding Against the Master Are Intended to be Two Entirely Separate Proceedings And the Stay Provision of § 185 Ensures This.

Congress intended by enacting the Limitation Act to protect shipowners from excessive liability for the negligence of masters, officers and crew over whom the shipowners had no control. To carry out this federal policy, the shipowner was given the right to have the privity and knowledge issue (upon which the right to limit liability is based) determined in an *admiralty* proceeding.

Another purpose of the Limitation Act is to afford the shipowner the benefit of admiralty law. The uniformity and certainty of the federal common law of admiralty is as important to shipowners as the right to limit liability to the value of the vessel. The Supreme Court has confirmed that a shipowner absolutely has the right to an admiralty forum on the privity and knowledge issue. *Laugues v. Green*, 282 U.S. 531, 51 S. Ct. 243 (1931); *Ex Parte Green*, 286 U.S. 437, 52 S. Ct. 602 (1932); *Larsen*

v. Northland Trans. Co., 292 U.S. 20, 54 S. Ct. 584 (1934). If privity and knowledge is tried in a state forum, even indirectly, this important right will be greatly diminished.

Set against this important shipowner right is § 187. On its face, the section is superfluous, as § 181-186 give no indication that a suit against the master, officers or crew could not go forward. The Supreme Court has held, however, that it is a clarification that the shipowner is not vicariously liable for the torts of the master, officers and crew if it had no privity and knowledge of the negligent acts or omissions. *Walker v. Transp. Co.*, 70 U.S. 150 (1866); *Craig v. Continental Ins. Co.*, 141 U.S. 638, 12 S. Ct. 97 (1891). The scope of the injured person's right to sue the master, officers or crew has not been considered by any court until the instant case.

Section 187 states that the injured person's remedy against the master, officers or crew shall not be "affected" by the Limitation Act. A corollary to this is that the shipowner's right to limitation should not be affected by the suit against the master, officers or crew. Obviously there will be conflict when two forums are dealing with the same factual issues, eliciting testimony from the same witnesses, and considering much of the same physical and documentary evidence. Congress left it to the Courts to create an equitable scheme in each case to preserve the rights of both the shipowner and the injured persons. Until now no court has had to grapple with the difficulty of proceedings in two forums when § 187 has been invoked.

2. In This Case, the Most Equitable Manner in Which to Carry Out the Purposes of the Limitation Act, Including § 187, is to Allow the Limitation Proceeding to be Tried First.

Following is a possible scenario that could develop if the state court suit against the master is allowed to proceed first: Suppose the jury decides that the master is negligent and it is adduced in testimony that the shipowner knew beforehand of the master's negligence. Such a finding could establish that the owner had privity and knowledge, before the Federal Court trying the limitation issue has made its decision; all this in a proceeding where the owner was not a party and not afforded an opportunity to cross examine witnesses or present evidence.

In state court both the Plaintiffs and Defendant Master would be motivated to prove privity and knowledge if the master were himself found negligent. The standard marine protection and indemnity policy pays only sums which the owner is legally obligated to pay. If the owner has no privity and knowledge it is only legally obligated to pay out the limitation value of its vessel. If the owner has privity and knowledge, it would not be entitled to limit liability and would be responsible for the negligence of its master under principles of respondeat superior.

If the state court suit goes forth and the master is found negligent, there would be no insurance payout. Until there is a judgment against the owner, the insurance company has no obligation to pay. Judgment against the owner could only be in the limitation action.

Many of these problems can be eliminated if the limitation proceeding goes first. All parties would be repre-

sented and the Claimants would have ample opportunity to elicit favorable testimony showing that the master was negligent. They can then use that testimony, and the same witnesses, in state court. More importantly, however, a determination of whether privity and knowledge existed would finally decide whether insurance coverage is available for any negligent acts of the master.

The only disadvantage that Petitioners will suffer by the delay in the State Court suit is that they will not get to indirectly try the privity and knowledge issue.⁴ Since this would give Petitioners an unfair advantage (attempting to prove fault against an unrepresented party) and essentially destroy the Respondents' right to an admiralty adjudication of privity and knowledge, the District Court wisely stayed the state court's proceeding against the master.

Petitioners complain that they will never be able to prove their case because of the delay. Particularly they allege that they were never able to depose the master before his death. Petitioners deposed almost every eyewitness in the limitation proceeding and were never restrained in any way from deposing the master. They simply did not do so. Any remaining discovery that the Petitioners feel they need has always been available in the ongoing limitation proceeding.

⁴ Petitioners admit that their purpose in pursuing the master in state court is to establish that the owner knew of problems with the port engine before the voyage (i.e. had privity and knowledge): "Petitioners . . . have been deprived of . . . other valuable information on whether Paradise knew or should have known of the problem with the port engine prior to the PEARL KAI's voyage of June 19, 1984." (Petition at 9.)

3. The Stay of Suit Against the Master is a Preservation of the Limitation Act, But Not an Expansion of Shipowner's Rights.

Petitioners also argue that the District Court has improperly expanded the Limitation Act by its decision. What Petitioners call an "expansion" of the Limitation Act is no more than the first construction of § 187 in light of the stay provision of § 185. It is entirely proper that a Federal Court construe a federal statute to effectuate the intent of Congress. The Court has also in this case achieved equity among the parties and balanced the rights of shipowners and injured persons conferred by the Limitation Act.

The real thrust of Petitioners' argument is that the Limitation Act is unfair and should be repealed by judicial fiat. They cite inflammatory remarks of commentators and propose that Petitioners have more right to go ahead with their suit against the master than Respondents do to limit their liability. Congress was cognizant of the rights of both shipowners and injured persons when it enacted the Limitation Act, and has monitored the Act through the years. As recently as 1984, the Act came before Congress for review. See Public Law No. 98-498 § 213 (to be codified as 46 U.S.C. Appendix 183(b)). Congress has elected to retain the limitation scheme. Respondents submit that this Court should not tamper with a Congressional enactment that has received recent attention, that clearly grants shipowners the right to an unencumbered limitation proceeding, and that has been interpreted in this case to do substantial justice among all parties.

VII.**CONCLUSION**

The stay of state court proceedings was proper because it preserves the balance between shipowners' rights and injured persons' rights contemplated by Congress. The limitation proceeding should be the exclusive domain for trial of the issue of shipowner's privity and knowledge. The question presented for review is not one of public importance and is not appropriate for Supreme Court review. Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

DATED this 17th day of November, 1986 at Honolulu, Hawaii.

ALCANTARA & FRAME

/s/ Robert G. Frame
Of Attorneys for Respondents



No. 86-665

In The
SUPREME COURT OF THE UNITED STATES
October Term 1986

In the Matter of the Complaint of PARADISE HOLDINGS, INC., a Hawaii corporation, as owner of, and Paradise Cruise, Limited, a Hawaii corporation, as lessee and charterer of the P/V PEARL KAI, Official Number 527 873, for exoneration from or limitation of liability.

TERRY LEE K. STONE, Individually; as Special Administratrix of the Estate of PAUL HENRY STONE; and as Guardian Ad Litem for PAUL HENRY STONE, JR. and JEREMY NOAH KAMEALOAOKUULEI STONE, minors,

Petitioners,

vs.

PARADISE HOLDINGS, INC. and PARADISE
CRUISE, LIMITED,

Respondents.

APPENDIX

Queen's Medical Center

Re: Edward E. Bruhn

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Civil No. 84-0783

In the Matter of

The Complaint of PARADISE HOLDINGS, INC., a Hawaii corporation, as owner of, and PARADISE CRUISE, LIMITED, a Hawaii corporation, as Lessee and Charterer of the P/V PEARL KAI, Official Number 527 873, for exoneration from or limitation of liability.

DEPOSITION OF JEANETTE DOYLE

Taken upon written interrogatories on behalf of Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and as Guardian Ad Litem for Paul Henry Stone, Jr., and Jeremy Noah Kamealohaokuulei Stone, minors, on July 24, 1985, commencing at 11:02 a.m., at the office of Donna N. Baba & Associates, 220 S. King Street, 560 Central Pacific Plaza, Honolulu, Hawaii, 96813, pursuant to Rule 31 of the Federal Rules of Civil Procedure.

* * *

(p. 2) JEANETTE DOYLE,

being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in answering the interrogatories propounded by the notary public as follows:

Q. 1 Please state your name.

A. 1 Jeannette Doyle.

Q. 2 What is your residence address?

A. 2 Honolulu.

Q. 3 Are you employed?

A. 3 Yes.

Q. 4 What is your employer's name?

A. 4 Queen's Medical Center.

Q. 5 What is your employer's address?

A. 5 1301 Punchbown Street.

Q. 6 What is your job or position with your employer?

A. 6 Medical information coordinator.

Q. 7 In that position do you have under your care, custody and control the records listed in the Subpoena Duces Tecum which was served on you?

A. 7 Yes.

8. 8 Were you served with a Subpoena Duces Tecum requiring your appearance before the notary public for the purpose of answering these questions and requir-

App. 3

ing you to bring with you any and all of the records listed in the Subpoena Duces Tecum?

(p. 3) A. 8 Yes.

Q. 9 Do you have all of those records with you?

A. 9 Yes.

Q. 10 Are those records complete?

A. 10 Yes.

Q. 11 Has any portion of those records ever been removed from your care, custody and control prior to this time?

A. 11 No.

Q. 12 If so, when and by whom?

A. 12 (Not applicable.)

Q. 13 Has any portion of those records ever been altered prior to this time?

A. 13 No.

Q. 14 If so, when and by whom?

A. 14 (Not applicable.)

Q. 15 What identifies those records as pertaining to the records required by the Subpoena Duces Tecum?

A. 15 Patient's name.

Q. 16 Would you please turn over to the notary public at this time the originals or complete and legible copies of the items listed in the Subpoena Duces Tecum which was served upon you?

A. 16 Yes.

Q. 17 Please describe briefly but completely so that they may be readily identified the records listed in the (p. 4) Subpoena Duces Tecum which you have turned over to the notary public?

A. 17 Inpatient and outpatient.

Q. 18 Please describe briefly but completely so that they may be readily identified any of your employer's records pertaining to the Subpoena Duces Tecum which you have not turned over to the notary public, including both those records which you have brought with you and those records which you have not brought with you.

A. 18 None.

Q. 19 Are you willing to waive the reading and signing of this deposition?

A. 19 Yes.

(July 24, 1985, 11:07 a.m., the deposition was concluded. Reading and signing of the deposition were waived by the deponent. A copy of the records is included.)

Civil No. 84-0783

(Caption omitted in printing)

DEPOSITION OF GLENN C. SICKS

Taken on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, at the law offices of Schutter Cayetano Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii, commencing at 9:07 a.m., on Thursday, January 9, 1986, pursuant to Notice.

• • •

(p. 4) GLENN C. SICKS,

called as a witness on behalf of the Claimants, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MERCE:

Q Would you please state your name for the record?

A Glenn Charles Sicks.

Q What is your residence address, Mr. Sicks?

A 1563 Molina Street, Honolulu, Hawaii.

Q Are you employed?

A Yes, I am.

Q What is your employer's name?

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A U.S. Coast Guard.

Q And what is your employer's address?

A 433 Ala Moana Boulevard, Honolulu, Hawaii.

Q What's your job or position with your employer?

A I'm chief, investigation department, at the Marine Safety Office.

Q In your position do you have under your care, custody and control any and all records including but not limited to notes taken by investigative officers and any tape recordings pertaining to an accident involving the PEARL KAI on June 19, 1984 that are kept by your employer?

A Yes, I do.

* * *

App. 7

Civil No. 84-0783

(Caption omitted in printing)

DEPOSITION OF LEILA YUMI ISHITANI

Taken on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, at the law office of Schutter Cayetano Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii, commencing at 8:39 a.m., on Friday, December 27, 1985, pursuant to Notice.

* * *

(p. 4) LEILA YUMI ISHITANI,

called as a witness on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MERCE:

Q Would you please tell us your full name?

A My full name?

Q Yes.

A My full name is Leila Yumi Ishitani.

Q What is your address, Ms. Ishitani?

A My present address?

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Q Your residence address, right.

A 1651 Frog Lane, No. 302.

Q Before we go any further, let me ask you whether you've ever had your deposition taken before.

A No, I haven't.

Q Let me give you a couple of instructions, then.

First, I'm going to be asking you some questions that pertain to an incident which occurred on June 19th, 1984 involving the Pearl Kai. All of my questions and all of your answers are going to be taken down by the
...

* * *

App. 9

Civil No. 84-0785

(Caption omitted in printing)

DEPOSITION OF CHRISTOPHER HENDERSEN

Taken on behalf of Claimants Stone at the Law Offices of Schutter, Cayetano and Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii 96813, commencing at 1:05 p.m., on Monday, December 23, 1985, pursuant to Notice.

* * *

(p. 3) CHRISTOPHER HENDERSEN,

called as a witness by and on behalf of the Claimants Stone, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE REPORTER: A copy of our disclosure is present for your examination and a copy will be attached to the deposition.

EXAMINATION

BY MR. MERCE:

Q. Would you state your name, please.

A. Christopher Hendersen.

Q. Mr. Hendersen, my name is Bob Merce. I'm going to be asking you some questions this afternoon about the PEARL KAI and work you may have done on it.

Have you ever had your deposition taken before?

A. No.

Q. Let me tell you briefly what is involved. I'm going to be asking you some questions, and all of my questions and all of the answers that you give will be taken down by the court reporter word for word. At the end of the deposition of the court reporter will transcribe the testimony and make it . . .

* * *

Civil 'No. 84-0783

(Caption omitted in printing)

DEPOSITION OF DAVID SILVEY

Taken on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, at the law offices of Schutter Cayetano Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii, commencing at 1:12 p.m., on Friday, December 27, 1985, pursuant to Notice.

* * *

(p. 4) DAVID SILVEY,

called as a witness on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MERCE:

Q Would you please state your name?

A David Silvey.

Q Are you employed, Mr. Silvey?

A Employed by Hawaiian Cruises and Glass Bottom Boat.

App. 12

Q Have you ever had your deposition taken before?

A Yes, I have.

Q Are you generally familiar with the procedure, then?

A Yes.

Q Let me give you just a couple of reminder instructions that are fairly important.

First, if you don't understand a question that I ask you, don't answer it. Just ask me to repeat it or rephrase it and I'll do so until I'm clear to you, okay?

A Yes.

* * *

App. 13

Civil No. 84-0785

(Caption omitted in printing)

DEPOSITION OF RICHARD F. VIERA

Taken on behalf of Claimants Stone at the Law Offices of Schutter, Cayetano and Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii 96813, commencing at 9:00 a.m., on Monday, December 23, 1985, pursuant to Notice.

* * *

(p. 3) RICHARD F. VIERA,

called as a witness by and on behalf of the Claimants Stone, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE REPORTER: A copy of our disclosure is present for your examination and a copy will be attached to the deposition.

EXAMINATION

BY MR. MERCE:

Q. Would you state your name for the record, please.

A. Richard F. Viera.

Q. And are you employed, Mr. Viera?

A. Yes, I am.

Q. Who is your employer?

A. The United States Coast Guard.

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Q. What is your rank in the Coast Guard?

A. Lieutenant.

Q. Have you ever had your deposition taken before, Lieutenant Viera?

A. No, I haven't.

Q. I notice there's somebody here with you. Is this Mr. Campbell from the Coast Guard?

A. Yes, it is.

* * *

App. 15

Civil No. 84-0785

(Caption omitted in printing)

DEPOSITION OF FRANKLIN TOMAS

Taken on behalf of Claimants Stone at the Law Offices of Schutter, Cayetano and Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii 96813, commencing at 8:40 a.m., on Monday, December 30, 1985, pursuant to Notice.

* * *

(p. 3)

FRANKLIN TOMAS,

called as a witness by and on behalf of the Claimants Stone, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE REPORTER: A copy of our disclosure is present for your examination and a copy will be attached to the deposition.

EXAMINATION

BY MR. MERCE:

Q. Will you state your name for the record, please.

A. Franklin J. Tomas.

Q. What is your residence address, Mr. Tomas?

A. 59650 Alapio Road, Haleiwa, Zip Code 96712.

Q. Are you presently employed?

A. Yes, I am.

Q. Who was your employer?

A. Hawaiian Cruises, Limited.

Q. Mr. Tomas, have you ever had your deposition taken before?

A. Yes, I have.

Q. Are you generally familiar with the procedures then that are used in a deposition?

A. Fairly acquainted with it, yes.

* * *

(Caption omitted in printing)

DEPOSITION OF MATTHEW DAVID ARO

Taken on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, at the law offices of Schutter Cayetano Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii, commencing at 9:14 a.m., on Monday, March 10, 1986, pursuant to Notice.

* * *

(p. 4)

MATTHEW DAVID ARO,

called as a witness on behalf of the Claimants Terry Lee K. Stone, Individually; As Special Administratrix of the Estate of Paul Henry Stone; and As Guardian Ad Litem for Paul Henry Stone, Jr. and Jeremy Noah Kamealohaokuulei Stone, minors, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MERCE:

Q Please state your name.

A Matthew David Aro, A-r-o.

Q What is your residence address?

A 1244 Nehoa, N-e-h-o-a, Street. It's a house, residence.

Q Have you ever had your deposition taken before, Mr. Aro.

A. No.

Q Have you had an opportunity to speak to your counsel about what a deposition is and how we proceed?

A Yes.

Q Let me give you a couple of instructions that I'd like you to keep in mind throughout the deposition.

First, do you understand that your testimony here today is under oath just as if you were in a court of law?

* * *

App. 19

UNITED STATES DISTRICT COURT

TERRY LEE STONE, INDIVIDUALLY
AND AS ADMINISTRATRIX OF THE
ESTATE OF PAUL HENRY STONE, ET AL
VS.

PARADISE HOLDINGS, INC., ET ALS

DOCKET NO. 84-0783

Deposition upon written interrogatories of William A. Estrella, custodian of records, Blount Marine Corporation, at the offices of Blount Marine Corporation, 461 Water Street, Warren, RI, before Judith L. Montie, notary public.

* * *

(p. 1) FRIDAY, JANUARY 3, 1986

William A. Estrella, Jr., having been duly sworn,
testified as follows:

EXAMINATION BY NOTARY PUBLIC

Q Please state your name?

A William Arthur Estrella, Jr.

Q What is your employer's name?

A 58 Baker Street, Warren, Rhode Island.

Q Are you employed?

A Yes.

Q What is your employer's name?

A Blount Marine Corporation.

Q What is your employer's address?

A 461 Water Street, Warren, Rhode Island.

Q What is your job or position with your employer?

A Director of marketing and special projects.

Q In that position do you have under your care, custody, and control the records listed in the Subpoena Duces Tecum which was served on you?

A Yes, I do.

Q Were you served with a Subpoena Duces Tecum requiring your appearance before the notary public for the purpose of answering these questions and requiring you to bring with you any and all of the records listed in the Subpoena Duces Tecum?

* * *

REAR ADMIRAL CLYDE E. ROBBINS
OR HIS DESIGNATED AGENT IN CHARGE
OF LICENSING U.S. COAST GUARD

Civil No. 84-0783

(Caption omitted in printing)

DEPOSITION OF LT. COMMANDER
WILLIAM E. BRUCE

Taken upon written interrogatories on behalf of the Claimants Stone, on May 31, 1985, commencing at 9:00 a.m., at the offices of Schutter Cayetano Playdon, 618 Kawaiahao Plaza, 567 South King Street, Honolulu, Hawaii, 96813, pursuant to Rule 31 of the Hawaii Rules of Civil Procedure.

* * *

(p. 2) LT. COMMANDER WILLIAM E. BRUCE,

being first duly sworn to testify to the truth, the whole truth, and nothing but the truth, testified in answering the interrogatories propounded by the notary public as follows:

Q 1 Please state your name.

A 1 Lieutenant Commander William E. Bruce.

Q 2 What is your residence address?

A 2 My address is 1269 Hudson, H-u-d-s-o-n, Circle, Honolulu, Hawaii, 96819.

Q 3 Are you employed?

A 3 Yes.

Q 4 What is your employer's name?

A 4 United States Coast Guard.

Q 5 What is your employer's address?

A 5 U.S. Coast Guard Marine Safety Office, 433
Ala Moana, Honolulu, 96813.

Q 6 What is your job or position with your employer?

A 6 I am the chief of the regional examination center.

Q 7 In that position do you have under your care, custody and control the records listed in the Subpoena Duces Tecum which was served on you?

A 7 Yes, I do.

Q 8 Were you served with a Subpoena Duces Tecum requiring your appearance before the notary public for the purpose of answering these questions and requiring you to . . .

* * *
